

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Xavier L. McCoy,)	C/A No.: 4:11-1683-JFA-TER
)	
Plaintiff,)	
)	
v.)	ORDER
)	
Mrs. Allyson Glidewell,)	
)	
Defendant.)	
)	
)	

The *pro se* plaintiff, Xavier L. McCoy, brings this action purportedly under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101, *et seq.* However, the body of plaintiff's complaint contains allegations that the defendant violated plaintiff's due process rights during a disciplinary hearing which resulted in the loss of good time credits.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation wherein he suggests that this court should grant the defendant's motion for summary judgment.² The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation and without a hearing.

The parties were advised of their right to file objections to the Report and

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

² An order was issued pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) notifying plaintiff of the summary dismissal procedure and possible consequences if he failed to adequately respond to the motion for summary judgment. Plaintiff responded to the motion.

Recommendation which was filed on June 18, 2012. The plaintiff filed objections to the Report after being granted an extension of time within which to do so. Thus, it appears this matter is ripe for review.

The Magistrate Judge opines that the plaintiff has failed to exhaust his administrative remedies with regard to his grievance before the SCDC. This court agrees and grants summary judgment in favor of the defendant on this issue.

With regard to his motion for a preliminary injunction, the Magistrate Judge finds that the plaintiff has failed to make the requisite showing under *Winter v. Natural Resources Defense Council, Inc.*, 55 U.S. 7, 129 S.Ct. 365, 374 (2008). This court agrees and denies plaintiff's motions for a preliminary injunction (ECF No. 135).

After a careful review of the record, the applicable law, the Report and Recommendation, and the objections thereto, the court finds that the Magistrate Judge has accurately summarized the facts and applied the correct principles of law. Therefore, the Report and Recommendation is adopted in full and incorporated into this order. The court has conducted the required *de novo* review and finds the plaintiff's objections are duplicative of the plaintiff's original complaint, are without merit, and are thus overruled.

Accordingly, the defendant's motion for summary judgment (ECF No. 109) is hereby granted and this action is dismissed with prejudice.

All other pending motions³ in this action are denied.

³ The court notes that the plaintiff has filed 45 motions to appoint counsel during the pendency of this litigation and numerous motions to compel and for extensions of time.

IT IS SO ORDERED.

August 28, 2012
Columbia, South Carolina

A handwritten signature in black ink that reads "Joseph F. Anderson, Jr." The signature is written in a cursive, flowing style.

Joseph F. Anderson, Jr.
United States District Judge